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Calendar No. 799

101ST CONGRESS *2d Session*	SENATE	REPORT 101-445

COASTAL ZONE IMPROVEMENT ACT OF 1990

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

together with

ADDITIONAL VIEWS

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 2782

AUGUST 30, 1990.—Ordered to be printed

Filed under the authority of the order of the Senate of August 2 (legislative day, July 10), 1990

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Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

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[To accompany S. 2782]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2782) to amend the Coastal Zone Management Act of 1972 to authorize appropriations for fiscal years 1991 through 1995 and to require State coastal zone management agencies to prepare and submit for the approval of the Secretary of Commerce programs for the improvement of coastal zone water quality, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

The purpose of S. 2782 is to improve management of land and water use in coastal areas of the United States. The legislation authorizes appropriations through fiscal year (FY) 1995 for the Coastal Zone Management Act of 1972 (CZMA). S. 2782 also makes a number of other changes to the CZMA, including the establishment of state water quality protection programs, the creation of a new enhancement grant program, and the strengthening of the Federal consistency provisions.

Background and Needs

In 1969, the Commission on Marine Science, Engineering and Resources (the Stratton Commission) recommended that:

> . . . a Coastal Zone Management Act be enacted which will provide policy objectives for the coastal zone and authorize federal grants-in-aid to facilitate the establishment of State Coastal Zone Authorities empowered to manage the coastal waters and adjacent land.

In response to this recommendation, several coastal zone management bills were introduced in the 91st Congress (1969–70). No final action was taken on any of these bills in the 91st Congress, but during the 92nd Congress the CZMA was passed and signed on October 27, 1972, by President Nixon.

The CZMA established a national coastal resource management framework to assist states and territories in developing the capability to manage their coastal resources. The Act provides policy guidance and financial and technical assistance to states and territorial governments to prepare and implement programs which balance the use and conservation of coastal resources.

Congress declared four basic national coastal zone management policies in the CZMA: (1) to preserve, protect, develop and, where possible, to restore or enhance the resources of the United States' coastal zone; (2) to encourage and assist the States to develop and implement Coastal Zone Management (CZM) programs meeting specified national standards; (3) to provide for increased specificity in protecting significant natural resources, reasonable coastal dependent economic growth, improved protection of life and property in hazardous areas, and improved predictability in governmental decisionmaking; and (4) to encourage the participation and cooperation of public, State, and local governments, interstate and other regional agencies, and Federal agencies in coastal zone management.

Under section 303 of the CZMA, the scope and objectives of the national program are identified as: protection of natural resources, management of coastal development to avoid hazardous areas; priority consideration given to coastal dependent uses energy facility siting, and public shorefront access; assistance in redevelopment of urban waterfronts and ports; coordination and simplification of governmental procedures to ensure expedited governmental decisionmaking for management of coastal resources; consultation and coordination with Federal agencies; public participation in coastal decisionmaking; and comprehensive planning, conservation and management of living marine resources.

To encourage State participation, the CZMA established "section 305" management program development grants to assist coastal States in the development of coastal management programs to balance the uses of the coastal zone. State CZM programs developed under section 305 and approved by the Secretary of Commerce (Secretary) became eligible under section 306 of the CZMA for ongoing assistance to implement and enhance their federally-approved CZM program. All grants require equal matching funds from the State.

Since passage of the CZMA, all 35 eligible States and territories have participated in the program to some degree.

An additional incentive for States to participate in the CZM program is the availability of a "Federal consistency" mechanism under section 307. This provision requires that Federal activities (including private activities requiring Federal permits) directly affecting the coastal zone must be conducted "to the maximum extent practicable" in a manner consistent with the State CZM program. This allows a State to have some impact on Federal activities that occur within and beyond the State's territorial jurisdiction. This unique tool sometimes has engendered controversy, especially when applied to Outer Continental Shelf (OCS) oil and gas activities.

During the initial phase of CZMA implementation, the principal Federal role was to provide both financial and technical assistance to States. During this period, the primary Federal objective was to encourage State participation and, by using the incentives of financial aid and Federal consistency, incorporate national goals into State programs. From 1974-79, the National Oceanic and Atmospheric Administration (NOAA) provided roughly $67,500,000 in program development grants to 35 coastal States and territories.

Early State response to the CZMA was strong. By 1975, every coastal State had begun development of a management program under section 305. In fact, prior to passage of the CZMA, several States already had begun coastal management efforts on their own.

In 1976, the State of Washington became the first State to have a CZM program approved by the Secretary. The State of Oregon followed in 1977. Most State programs were approved during the period 1978-82. Thus, while the CZMA was enacted 18 years ago, most State programs have been operating for only about half that time.

Currently, 29 (24 States and 5 territories) of the 35 eligible States and territories have federally-approved CZM programs. The State of Virginia, the most recent entrant into the program, received program approval in 1987. At present, six States are not actively participating in the program: Georgia; Texas; Illinois; Indiana; Minnesota; and Ohio. Collectively, the 29 federally-approved programs in the national CZM network represent over 94 percent of the Nation's marine and Great Lakes coastline.

The nature and structure of CZM programs vary widely from State to State. This diversity was intended by Congress. Some States, like North Carolina, passed comprehensive legislation as a framework for coastal management. Other States, like Oregon, used existing land use legislation as the foundation for their federally-approved programs. Finally, States like Florida and Massachusetts networked existing, single-purpose laws into a comprehensive umbrella for coastal management. The national program, therefore, is founded in the authorities and powers of the coastal States and local governments. Through the CZMA, these collective authorities are orchestrated to serve the ". . . national interest in effective management, beneficial use, protection, and development of the coastal zone," as stated in the CZMA findings.

The CZMA also provides for the establishment and operation of a system of National Estuarine Research Reserves. Eighteen reserves

have been established, and several other sites are under consideration. The reserves are natural laboratories that support management-oriented research to provide information needed by coastal resource managers and educational and interpretive programs to improve public awareness and understanding of the coastal environment.

CZMA FUNDING AND REAUTHORIZATION

Authorization of appropriations for the CZMA expires at the end of the current fiscal year. For FY 1990, section 306 state grants under the CZMA are authorized at $40,600,000, while NOAA's program management is authorized at $4 million. For FY 1990, the National Estuarine Reserve System under the CZMA is authorized at $5,500,000, while section 309 interstate grants are authorized at $1,500,000. FY 1990 appropriations for the CZMA totaled $41,000,000 (less than the total authorization), with State grants funded at $33,800,000, program management funded at $3,300,000, the National Estuarine Reserve Research System funded at $3,500,000, and interstate grants funded at $400,000.

For FY 1991 and beyond, the administration is proposing to restructure the authorization for the CZMA program. The administration's proposal would result in an overall reduction in the state grant authorization levels to $30 million for each of the next five years. In addition, the proposal would phase down section 306 State grants from a level of $30 million in FY 1991 to $15 million in FY 1995. In place of the section 306 State grants, the administration's proposal would initiate a competitive grant program in FY 1992.

COASTAL WATER QUALITY

The coastal States, in partnership with the Federal Government, have made significant progress in the management of the Nation's coastal resources. Presently, all State CZM programs provide for the protection and preservation of coastal habitat. However, coastal management problems remain and are exacerbated by rapid growth in coastal areas.

A number of recent event has focused attention on the Nation's coastal environment. The unexplained deaths of numerous dolphins along the Atlantic coast, pollution of our beaches by medical wastes, closure of many acres of shellfish beds, and the *Exxon Valdez* oil spill all have served to make the public increasingly concerned about the degradation of the coastal zone. Further, the cumulative effects of pollution from nonpoint sources, such as agriculture runoff, urban sewer outfalls, and storm drain overflows, are becoming recognized as a growing threat to coastal water quality. The Office of Technology Assessment, in its report, "Wastes in the Marine Environment," summarized the status of coastal waters by saying:

> (1) Estuaries and coastal waters around the country receive the vast majority of pollutants introduced into marine environments. As a result, many of these waters have exhibited a variety of adverse impacts, and their overall health is declining or threatened.

(2) In the absence of additional measures, new or continued degradation will occur in many estuaries and some coastal water around the country.

Although the wholesale destruction of coastal wetlands has been stopped, the cumulative impacts of many small development projects and urban runoff continue to adversely affect these sensitive habitats. Coastal pollution, and specifically nonpoint source pollution, which arises from unmanaged land use and development, is a significant cause of declining coastal water quality that needs greater attention.

The CZMA itself specifies that state water quality standards—those which are adopted under the Clean Water Act—are automatically incorporated into a State's CZM program. However, few State programs place much emphasis on this aspect of their management responsibility. Instead, they rely on State water quality agencies to carry out this duty.

The CZM—designed to encourage States to balance protection and development of the coastal zone—could be a strong, yet flexible, tool to address nonpoint source pollution and coastal water quality through management of coastal land uses. Strengthening the CZM role in nonpoint source management and coastal water quality is an important opportunity to advance the national goal of protecting our coastal resources.

Federal Consistency

The consistency provisions under section 307 of the CZMA provide a strong incentive for States to enter into partnership with the Federal Government. Once the Secretary approves a State CZM plan, the CZMA requires that Federal activities and projects affecting the coastal zone, as well as activities and projects that require Federal permits, be consistent with Federally-approved State CZM plans. This provides the States with a measure of control over Federal activities which affect their coastal zone.

Distinct consistency standards and procedures apply to Federal agency and private activities that require Federal permits, including oil and gas exploration development, and production on the OCS. Section 307(c)(1) of the CZMA requires Federal agency activities that directly affect the coastal zone to be consistent "to the maximum extent practicable" with Federally-approved State CZM plans. The Federal agency that conducts or supports an activity determines whether that activity is consistent with the State CZM plan. The coastal State then may concur or object. In the event of a serious disagreement between a state and a Federal agency, the State may pursue mediation with the Federal agency or seek to enjoin the activity in Federal court.

In the 1984 Supreme Court decision, *Secretary of the Interior* v. *California*, 464 U.S. 312 (1984), Justice O'Connor for the majority held that the Department of the Interior's sale of OCS oil leases was not an activity "directly affecting" the coastal zone within the meaning of section 307(c)(1), and this, no consistency review was required. Furthermore, the majority opinion (in which five justices joined) maintained that the "directly affecting" language was aimed primarily at activities conducted or supported by Federal

agencies on Federal land physically situated in the coastal zone, but excluded from the requirements of the CZMA due to their status as Federal enclaves.

In the dissenting opinion authored by Justice Stevens (along with Justices Brennan, Marshall, and Blackmun), the minority maintained that the language "directly affecting" focuses on the effects of an activity, not where an activity takes place. If a Federal activity affects the coastal zone, then the minority interpreted it to be covered by section 307(c)(1). In addition, the dissenting opinion concluded that OCS lease sales "directly affect" the coastal zone. That opinion stated that: ". . . orderly, long-range, cooperative planning dictates that the consistency requirement must apply to OCS leasing decisions. The sale of OCS lease involves the expenditure of hundreds of millions of dollars. If exploration and development of the leased tracts cannot be squared with the requirements of the CZMA, it would be in everyone's interest to determine that as early as possible."

COASTAL HAZARDS

Over the past century, the mean sea level has been rising in many locations due to a variety of causes. One important factor has been subsidence, the settling of the land surface in coastal areas. Another possible cause of sea level change is global warming caused by the "greenhouse effect." A number of well-known scientific authorities suggest that the buildup of atmospheric carbon dioxide will warm the Earth's surface and ocean waters, causing thermal expansion of the ocean and melting of polar ice caps. Predicting the consequences of global warming is the subject of ongoing debate in the scientific community. A 1988 study by the Environmental Protection Agency (EPA) indicates that the rise in sea level could range from several inches to several feet.

In addition, some studies indicate that the United States may have experienced a meteorologically "calm" period over the past 80 to 100 years and is now moving into a period of increased storm activity. Since much of the development of our Nation's coasts has occurred in the past 50 years, such a change in weather patterns could result in increased property damage to coastal areas.

Proper planning will enable coastal communities to prepare for potential changes in the coastal environment and minimize damage to property and the loss of life.

LEGISLATIVE HISTORY

Since the beginning of the 101st Congress, the Committee and the National Ocean Policy Study have held two hearings on the CZMA. On August 3, 1989, Senator Kerry chaired a hearing on the role of the CZMA in coastal resource protection. Witnesses from NOAA, EPA, State CZM programs, and environmental groups focused on means by which the CZMA could be strengthened to provide better management for our coastal resources. On May 9, 1990. Senator Kerry chaired a reauthorization hearing on the CZMA which examined a number of topics, including: funding levels; coastal water quality; habitat protection; federal consistency; sea level rise; and coastal hazards. Witnesses at the hearing included

representatives from NOAA, EPA, the States, the recreational fishing industry, the oil industry, and the environmental community.

S. 2782 was introduced by Senator Kerry on June 26, 1990. Senators Hollings, Stevens, Packwood, Inouye, Gore, Graham, Cranston, Akaka, Lautenberg, and Adams are cosponsors of the legislation.

On June 27, 1990, in open executive session, the Committee considered S. 2782, and ordered the bill reported favorably, without objection.

Summary of Major Provisions

The bill addresses a number of major issues in coastal zone management, including the following:

CZMA Funding and Reauthorization.—The bill authorizes appropriations for five years at increased levels. The authorization for FY 1990 is $51,600,000. The bill authorizes a total of $68,700,000 for FY 1991. The authorization levels would increase each year through FY 1995, when the total authorization would be $107,900,000. The increase in authorization levels is due primarily to the establishment of a new program requirement (new section 306B—"Managing Land Uses That Affect Coastal Waters"), the creation of a new grant program (section 309, as amended—"Coastal Zone Enhancement Grants"), and the revitalization of a technical assistance program (new section 310—"Technical Assistance").

Coastal Water Quality.—The bill includes a provision requiring each coastal state with a federally approved CZM plan to develop a new program to manage land uses that affect coastal waters. Within three years, participating coastal States would be required to develop a water quality protection program to submit to the Secretary. After that time, the Secretary is required to withhold increasing amounts of a state's section 306 grant up to a maximum of 30 percent after six years, if a State fails to meet the submission requirement.

To receive approval, each State's protection program must identify land uses contributing to the degradation of coastal waters, critical coastal areas, and appropriate coastal land use management measures to protect coastal water quality. The program must provide for technical assistance to local governments, public participation, administrative coordination between State and local agencies, and modification of State coastal zone boundaries if necessary to manage land uses that affect coastal water quality.

Enhancement Grant Program.—The bill establishes a new voluntary coastal zone enhancement grant program under the CZMA to encourage states to concentrate greater efforts on meeting a number of high-priority national objectives. The grant program is based on the Administration's proposal to establish a "National Priority Program Element Enhancement Grant Program." The bill provides funds for States to incorporate six national interest objectives into their Federally-approved state coastal management programs. The six coastal zone enhancement objectives include: wetlands protection; coastal hazard prevention; improved public access; marine debris reduction; fishery management cooperation; and special area management planning.

Federal Consistency.—The bill strengthens the Federal consistency provisions of the CZMA by reversing the 1984 Supreme Court decision, *Secretary of the Interior* v. *California.* That decision held that OCS lease sales are not subject to the consistency provisions of the CZMA. The bill would clarify that all Federal agency activities (including OCS lease sales) within or outside the coastal zone must be consistent to the maximum extent practicable with federally approved State management programs if such activity affects, or will lead to effects on, the coastal zone.

Sea Level Rise and Coastal Hazards.—The bill amends the findings and policy sections of the CZMA to recognize the potential impact of both sea level rise and land subsidence on the coastal zone. The bill requires States to take into consideration in their planning process the adverse impacts that may result from sea level rise and land subsidence.

The bill makes a number of other changes to the CZMA, including:

The establishment within NOAA of an Assistant Administrator for Ocean and Coastal Zone Management;

The repeal of the interstate grant program;

The reinitiation of management program development grants to assist non-participating coastal States in the development of a CZM program; and

The strengthening of Federal oversight in reviewing each State's performance in administering its approved program.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate prepared by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 9, 1990.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 2782, the Coastal Zone Improvement Act of 1990.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer,
Director.

Congressional Budget Office Cost Estimate

1. Bill number: S. 2782.
2. Bill title: The Coastal Zone Improvement Act of 1990.
3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation, June 27, 1990.

4. Bill purpose: S. 2782 would reauthorize grant programs administered by the National Oceanic and Atmospheric Administration (NOAA) under the Coastal Zone Management Act of 1972. The bill would authorize appropriations of about $69 million for 1991, $78 million for 1992, $88 million for 1993, $97 million for 1994, and $107 million for 1995.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1991	1992	1993	1994	1995
Authorization level	69	78	88	97	107
Estimated outlays	47	70	83	93	103

The costs of this bill would be in budget function 300.

Basis of estimate: This estimate assumes that the full amounts authorized would be appropriated for each fiscal year. The estimated outlays are based on historical spending patterns for NOAA.

6. Estimated cost to State and local governments: The grants authorized by this bill would be provided to coastal states for coastal zone management programs. For most of these grants, the state would be required to match the federal contribution and prepare management plans for coastal areas.

7. Estimate comparison: None.

8. Previous CBO estimate: CBO has previously prepared cost estimates for two bills that also would reauthorize the Coastal Zone Management Act. On April 27, 1990, CBO prepared an estimate for H.R. 4030, the Coastal Zone Reauthorization Amendments of 1990, as ordered reported by the House Committee on Merchant Marine and Fisheries on April 18, 1990; H.R. 4030 would authorize appropriations for these programs of $64 million, $76 million, $89 million, $96 million, and $104 million for fiscal years 1991 through 1995, respectively. On May 31, 1990, CBO prepared an estimate for H.R. 4450, the Coastal Zone Act Reauthorization Amendments of 1990, as ordered reported by the House Committee on Merchant Marine and Fisheries on May 23, 1990; H.R. 4450 would authorize appropriations of $54 million, $57 million, $59 million, $62 million, and $64 million for fiscal years 1991 to 1995, respectively.

9. Estimate prepared by: Michael Sieverts.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

NUMBER AND TYPE OF PERSONS REGULATED

Because S. 2782 is primarily a reauthorization of existing law, the number and type of persons regulated under this bill are not expected to increase significantly. The current CZMA applies to all Federal agencies and private individuals and businesses conducting

activities, inside or outside of the coastal zone, that affect land or water uses or natural resources within the coastal zone. Some increase may occur as a result of section 105, which establishes a new program to address nonpoint sources of pollution that affect coastal water quality.

ECONOMIC IMPACT

The Committee estimates that the enactment of S. 2782 will have no significant inflationary impact on prices and costs in the operation of the national economy. In addition to reauthorizing existing CZMA grant programs, the bill would establish new grant programs to eligible states and territories to develop coastal management programs and coastal water quality protection programs. The total amount of appropriations authorized for these new programs by the bill is $10,750,000 for FY 1991, $15,750,000 for FY 1992, $20,750,000 for FY 1993, $25 million for FY 1994, and $30 million for FY 1995. For FY 1991, these amounts, when combined with appropriations authorized for existing CZMA programs, total less than what was authorized for the CZMA in 1980.

If S. 2782 is implemented as intended by the Committee, economic growth should continue to occur in coastal areas throughout the country, where the Gross National Product (GNP) increased by 33.5 percent from 1978 to 1985, compared with an increase of 23.8 percent for the GNP as a whole. The bill is not intended to disadvantage the commercial and recreational fishing industries, tourism, real estate values and other private sectors. S. 1782 should also result in fewer claims against the Federal government through the national flood insurance program due to improved coastal management. Moreover, activities authorized by the bill can enhance, preserve, and protect natural resources of the coast, including wetlands, wildlife and fishery habitat, and coastal water quality, which would serve to increase the economic value of the coastal zone.

PRIVACY

This legislation will have no adverse impact on the personal privacy of the individuals involved.

PAPERWORK

This legislation will require some additional paperwork by the Secretary of the Interior and the Secretary of Commerce. Under S. 2782, the Department of the Interior will have to comply with the new consistency review requirements of section 307(c)(1) for offshore oil and gas lease sales conducted under the Outer Continental Shelf Lands Act. Also, the legislation requires states to develop new water quality protection programs. These programs will develop coastal management measures to address non-point source pollution. In addition, a new Office of Ocean and Coastal Zone Management within NOAA will be established.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE

This section sets forth the short title of the bill, the "Coastal Zone Improvement Act of 1990".

SECTION 2.—FINDINGS AND PURPOSES OF THIS ACT

Section 2(a) finds that the oceans, coastal waters, and estuaries are unique resources and that marine resources, including wetlands, contribute to the Nation's economic stability. It further finds that water quality in and around coastal areas is declining and that wetlands are being destroyed. This degradation and loss of resources are related to the increasing population along the coast. Future loss of coastal resources and, damage to property. infrastructure, and public works also may result from sea level rise associated with global climate change. There is not enough being done to manage and protect our coastal resources from these threats. State management programs are among the best tools for protecting coastal resources and must play a larger role, particularly in improving coastal zone water quality. All coastal states should have coastal zone management programs in place that conform to the CZMA, as amended by this Act.

In section 2(a)(7), the phrase "leveling of forests" refers to deforestation, not forest management. The Committee recognizes that forests can be managed in a healthy condition to increase carbon dioxide consumption and reduce their susceptability to insects, disease, and fire. Deforestation, by contrast, indicates practices which level and remove forests without regeneration.

Subsection (b) declares that the purpose of the bill is to enhance the effectiveness of CZMA by increasing our understanding of the coastal environment and expanding the ability of state coastal zone management programs to address coastal problems.

TITLE I—AMENDMENTS TO THE COASTAL ZONE MANAGEMENT ACT OF 1972

SECTION 101.—FINDINGS AND POLICY

This section amends the findings of the CZMA, adding language in section 302 of the Act which declares:

Under section 101(a)(1) that habitat areas of the coastal zone are ecologically fragile and are extremely vulnerable to destruction by human alterations; and

Under section 101(a)(2) that expanding demands are placing stress on the exclusive economic zone (EEZ) and compound the need to resolve conflicts among competing uses and values.

Section 101(a)(3) adds three new findings to section 302 of the CZMA, which declare that:

Land uses in the coastal zone may significantly affect the quality of coastal water and habitats, and efforts to control coastal water pollution from these activities must be improved;

Coastal states must plan for adverse effects in the coastal zone caused by sea level rise; and

Coastal states have substantial and significant interests in the protection, management, and development of the resources of the EEZ that can only be served by active State participation in Federal programs affecting such resources.

Section 101(b) amends the policies of the CZMA by amending section 303 of the Act. Section 101(b)(1) of the bill amends section 303(2) of the CZMA to declare that priority consideration be given for ecological, cultural, historic, and aesthetic values while allowing compatible economic development. As amended, this subsection clarifies that the national policy with regard to coastal zone management is that further economic development should be compatible with the priority values enumerated in the CZMA. The Committee intends the amended policy to be used by States to balance competing uses in a manner that favors the priority values; however, the Committee does not intend that "compatible" be so narrowly defined that economic development is vastly restricted in the coastal zone.

Section 101(b)(2) amends section 303(2)(B) of the CZMA to add areas likely to be affected by, or vulnerable to, sea level rise to those areas in which the States should manage coastal development.

Sections 101(b) (3) and (4) amend section 303(2) of the CZMA by adding two new subparagraphs to require coastal programs: (1) to manage coastal development to improve, protect, and restore the quality of coastal waters, and (2) to develop plans for addressing the adverse effects upon the coastal zone of land subsidence and sea level rise.

Section 101(b)(5) amends section 303(3) of the CZMA to encourage States to prepare special area management plans for areas likely to be affected by land subsidence, sea level rise, or fluctuating water levels in the Great Lakes.

Section 101(b)(6) amends section 303 of the CZMA by adding two new paragraphs to encourage coordination among local, State, and Federal agencies in the area of coastal management information dissemination, and to plan for emerging issues such as ocean uses seaward of the coastal zone which potentially could affect the coastal zone.

SECTION 102.—DEFINITIONS

Section 102(a) modifies the definition of coastal zone in section 304(1) of the CZMA by deleting the word "only" and adding "and to control those geographic areas which are likely to be affected by or vulnerable to sea level rise from global warming." This change was made in order to clarify the Committee's intention that coastal States should reexamine the present inland boundaries of their coastal zone and, to the extent necessary to meet the requirements of this bill, change those boundaries.

Section 102(b) adds two new definitions to section 304 of the CZMA which define coastal wetland and critical coastal area. The Committee intends that the definition of coastal wetlands under this section be consistent with the definition of wetlands used by Federal agencies.

Section 102(c) amends section 304(10) of the CZMA to define land use to be "a use, activity, or prject conducted on shorelines within the coastal zone." The definition is amended in order to delete the reference to section 306(g), which is no longer applicable.

Section 102(d) revises the definition of water use in section 304(18) of the CZMA to read "a use, activity, or project conducted in or on waters within the coastal zone." This change expands the definition of "water use" to include water quality measures, which are required by section 105 of the bill.

SECTION 103.—MANAGEMENT PROGRAM DEVELOPMENT GRANTS

Section 103 amends section 305 of the CZMA to allow the Secretary to make annual awards in FY 1991, 1992, and 1993 to encourage non-participating coastal states to develop management programs. States may receive two awards, which may not exceed $200,000 per year and which require the State to provide 20 percent of the award in matching funds. Under section 305(a) as amended, the Secretary must find that the State is making satisfactory progress in developing a program in order for that State to be eligible to receive a second-year award. Section 305(b) of the CZMA as amended by the bill requires States to submit completed CZM plans to the Secretary for approval.

SECTION 104.—ADMINISTRATIVE GRANTS

Section 104 deletes the existing administrative grant provisions of section 306 of the CZMA and replaces the entire section with a streamlined and updated administrative grant program. As amended, section 306(a) of the CZMA authorizes the Secretary to make matching grants to any coastal state for the purposes of administering that state's CZM program. States with plans approved prior to the date of enactment of the bill must match the federal grant on a one-to-one basis. State programs approved after the date of enactment of this bill would be eligible to receive a 4-to-1 Federal to State match the first year, 2.3-to-1 the second year, 1.5-to-1 the third year, and 1-to-1 the fourth year and each year thereafter. These grants are intended to encourage further the non-participating states to develop and implement federally-approved CZM plans.

New section 306(b) of the CZMA authorizes the Secretary to make grants under this section only if the state's CZM program has been approved under section 306(d) of the CZMA, and if the state is in compliance with all applicable requirements of the amended CZMA. The Committee does not intend that State programs be subjected to annual reapproval to determine if they meet "all applicable requirements of this title," and any decision to deny funding under this subsection must be predicated on evaluations properly conducted under section 312 of the amended CZMA.

Section 306(c), as amended, requires the Secretary to allocate grants based on a formula which takes into account the extent and nature of the shoreline and area covered by the program, population of the area, and other relevant factors. The current NOAA regulations assign 60 percent of the value to shoreline mileage and 40 percent to coastal population. This subsection also requires the

Secretary, after consulting with the coastal States, to establish maximum and minimum grants.

New section 306(d) of the CZMA consolidates the existing program approval requirements of the existing CZMA sections 305(b) and 306 (c), (d), and (e) into one location in the amended CZMA. Unless otherwise specified by the bill, the consolidation of these requirements, and of section 303, which is incorporated as a program requirement by reference, should be considered a technical change and not a new substantive requirement.

Section 306(d), as amended, establishes specific criteria that must be met before the Secretary may approve a state CZM program. Section 306(d)(8), as amended, would require that each State program provide for ". . . adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities. . .". This provision broadens existing law because the national interest in coastal zone management includes not only energy facilities but public access, recreation, and environmental protection as well.

Section 306(d)(13), as amended, requires that each management program provide for the inventory, designation, and protection of coastal resources of national significance. Section 306(d)(14), as amended adds a new "public participation" requirement under which each state program must provide for public participation in permitting processes, Federal consistency determinations, and other similar decisions.

Section 306(e), as amended, authorizes coastal states to amend or modify their management programs subject to certain conditions. It outlines the procedures for submission, review, and approval of amendments, modifications, or other program changes. Section 306(e)(3)(B), as amended, authorizes the Secretary to approve a program amendment, modification, or change on a preliminary basis. This preliminary approval may extend for no more than six months and may not be renewed. Preliminary approval of a program amendment, modification, or change, would allow a state to begin implementation using Federal funds.

SECTION 105.—MANAGING LAND USES THAT AFFECT COASTAL WATERS

Section 105 of the bill amends the CZMA to add a new section 306B. This new section requires coastal States to prepare and submit to the Secretary within three years a coastal water quality protection program. The purpose of the protection program is to develop and implement coastal land use management measures for land-based sources of nonpoint source pollution. The program is to be developed and implemented in close conjunction with other state and local authorities, especially water quality authorities, and is to be integrated with the state's coastal water quality program under title III of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) (Clean Water Act), as it relates to coastal water quality. Under new section 306B(c)(2), States which have not submitted an adequate protection program within three years will have an increasing proportion of their section 306 funds withheld, up to a maximum of 30 percent at the end of six years.

One concern raised during the hearings on the CZMA was the manner in which State CZM programs relate to ongoing efforts under state water quality programs. This legislation addresses this concern in several ways. First and foremost, the new section 306B of the CZMA reinforces existing requirements for effective land use management and reaffirms that State coastal programs should play a major role in developing and implementing coastal land use management measures that will assist in controlling nonpoint source pollution.

Second, States are allowed maximum flexibility in establishing state and local institutional arrangements. This flexibility has been a hallmark of the CZMA, and a key to its success.

Third, new section 306B requires that the program be coordinated with several of the other key programs pertaining to coastal water quality under the Clean Water Act. Finally, the new section requires that state CZM agencies consult with State water quality authorities and other state officials at key points in the implementation process.

The Committee does not intend that new section 306B(a) of the CZMA duplicate State programs for controlling pollution of coastal waters. As provided in section 307(f) of the CZMA, State coastal programs are already required to incorporate and enforce the standards and requiremens of the Clean Water Act. This requirement was included in the CZMA in 1972.

The primary Federal statute dealing with regulation of water quality is the Clean Water Act, and this title does not alter that law either explicitly or by implication. The principal obligation to develop and implement water quality standards is, and remains, with state water pollution control authorities. Nothing in this program alters those basic responsibilities.

State coastal zone management programs should work with water quality management authorities to control land uses which affect coastal waters. The requirements of this section should be viewed as a directive for better coordination and cooperation and does not supplant any existing authority, standard, or requirements of the Clean Water Act.

The coastal water quality protection program which is required by new section 306B(b) of the CZMA includes:

The identification of land uses which contribute to the degradation of coastal waters;

The identification of critical coastal areas within which any new land uses or substantial expansion of existing land uses could require land use management measures to protect and restore coastal waterquality and designated uses;

The implementation of land use management measures necessary to achieve appllicable water quality standards and to protect designated uses;

The provision of technical and financial assistance to local governments and the public for implementing identified land use measures; opportunities for public participation in all aspects of the protection program,

The establishment of mechanisms to improve coordination among State agencies and between State and local agencies involved in land use, water quality, and related programs; and

Modification of the State coastal zone boundaries, if necessary.

Under section 306B(c) of the CZMA, as amended, a proposed protection program would constitute an amendment to a State's federally-approved coastal management program.

Section 306B(d), as amended, requires the Secretary to provide technical assistance to coastal States and local governments for development and implementation of coastal water quality protection programs.

Section 306B(e), as amended, provides grants to States to meet the requirements of new section 306B. Funds available will be allocated according to regulations issued under section 306B(c), and will require a 20 percent state match. The Secretary is authorized to retain up to 33 percent of any funds appropriated for this section to assist States that the Secretary finds are making exemplary progress in complying with the requirements of this section or have extreme needs with respect to coastal water quality.

Under section 105(b) of the bill, the Secretary is required to issue guidelines for state implementation of new section 306B of the CZMA within 180 days, and regulations within 18 months.

SECTION 106.—COASTAL ZONE MANAGEMENT CONSISTENCY

Section 106 of the bill amends the Federal consistency provision of the CZMA. The Committee intends to overturn the U.S. Supreme Court decision in *Secretary of the Interior* v. *California*, 464 U.S. 312 (1984), in order to clarify that OCS oil and gas lease sales are subject to the consistency requirement of section 307(c)(1) of the CZMA. In *Secretary* v. *California*, the Supreme Court held that OCS oil and gas lease sales are not activities which "directly affect" the coastal zone within the meaning of section 307(c)(1) of the CZMA, and thus, a consistency review under this Act is not required before such lease sales are held by the Federal government. This holding was supported by three distinct lines of reasoning:

(1) The legislative history of section 307(c)(1) discloses that Congress did not intend the section to reach activities geographically situated outside the coastal zone. The "directly affecting" language was aimed at activities conducted or supported by Federal agencies on Federal lands physically situated in the coastal zone, but excluded from provisions of the CZMA by the formal definition of "coastal zone" (so-called "Federal enclaves");

(2) Lease sales do not "directly affect" the coast, since they are mere paper transactions which only entitle lessees to conduct "preliminary activities"; and

(3) The structure of section 307 suggests that an OCS lease sale is not an activity "conducted or supported" by a Federal agency, which would be subject to consistency review under section 307(c)(1), but rather is the activity of a non-Federal party authorized by a Federal permit, and thus is subject to consistency review under section 307(c)(3).

Section 307(c)(1), as amended, overturns the Court's holding in this case and responds to each of the Supreme Court's lines of reasoning. First, the bill deletes the "directly affecting" standard and

inserts the phrase "in or outside of the coastal zone." Second, section 301(c)(1), as amended, would provide a new test to replace "directly affecting." The new test would require application of the consistency review to any Federal agency activity within or outside the coastal zone that "affects any land or water use or natural resource of the coastal zone or leads to such effects." The Committee intends this standard to be construed to include later effects that may reasonably be expected to occur as a result of Federal agency action. Clearly, the development of energy facilities or other activities that would affect the coastal zone may reasonably be expected to occur as the result of a lease sale. However, the Committee does not intend this new test to include activities such as multi-year development plans, which are necessary for government planning purposes. While such planning exercises could lead to development at some future date, other more concrete steps must take place before development will occur with any reasonable degree of certainty. The expenditure of funds for leases by private parties creates a reasonable degree of certainty; the outline of possible government actions over a multi-year period does not.

Third, the Supreme Court's interpretation that an OCS lease sale is not subject to subsection (c)(1) consistency review under section 307 because it is not an activity "conducted or supported" by a Federal agency would be overturned, by deleting those words.

The Committee also intends to negate the possible "shadow effect" of the Supreme Court's decision on the application of Federal consistency to other Federal agency activities. Some Federal agencies have construed the Court's decision broadly to exempt other agency activities from Federal consistency review. In amending section 307(c)(1) of the CZMA, the Committee intends to dispel any doubt as to the applicability of this requirement to all Federal agency activities meeting the standard for review.

SECTION 107.—COASTAL ZONE ENHANCEMENT GRANTS

Section 107 of the bill amends section 309 of the CZMA to terminate the interstate grant program and authorize a new coastal zone enhancement grant program. New section 309(a) establishes six "coastal zone enhancement objectives," for which grants are to be made to requesting coastal states to help them meet the following objectives:

To prevent further loss of coastal wetlands in that state (i.e., to implement at the State level a "no net loss" policy for coastal wetlands in states desiring such a policy;

To prevent or significantly reduce threats to life and destruction of property in hazardous areas, and to anticipate and manage the effects of potential sea level rise;

To attain increased opportunities for public access to coastal areas;

To reduce marine debris entering the Nation's coastal and ocean environment;

To enhance fisheries management activities by increasing coordination with Regional Fishery Management Councils, and by developing and adopting procedures to control the cumula-

tive impacts of coastal development on fisheries production and habitat; and

To prepare and implement special area management plans for important coastal areas.

Section 309(b), as amended, authorizes the Secretary to make grants to States to develop and implement coastal program changes that support attainment of these coastal zone enhancement objectives. States would not be required to participate in this grant program. Sections 309 (c) and (d), as amended, establish funding levels and priorities for implementation of section 309.

Under section 309(e), as amended, within 12 months of enactment, the Secretary is required to promulgate regulations that establish specific and detailed criteria that must be addressed by the States as part of any coastal zone enhancement objectives; administrative or procedural rules or requirements necessary to facilitate development and implementation of coastal zone objectives; and other criteria necessary or appropriate to ensure that the evaluations of proposals and funding decisions are based on objective standards that are fairly applied.

Section 309(f), as amended, clarifies that State matching funds are not required under this section. Section 309(g), as amended, requires the Secretary to use up to 20 percent of funds appropriated under section 306 and 306A, as amended, to implement new section 309. Finally, under subsection 309(h), as amended, the Secretary shall suspend a State's eligibility for funding under section 309 for up to one year if a State does not meet the terms of a grant.

SECTION 108.—TECHNICAL ASSISTANCE

Section 108 of the bill would add a new section 310 to the CZMA to require the Secretary to provide technical assistance and management-oriented research to support development and implementation of State coastal management program amendments under new sections 306B and 309 and to further international cooperative efforts in coastal zone management. New section 310(b) requires the Secretary to coordinate all activities under this section, to make the results available to the States, and to consult with coastal States on a regular basis regarding the development and implementation of the technical assistance program.

SECTION 109.—COASTAL ZONE MANAGEMENT REVIEW

Section 109 of the bill amends section 312(b) of the CZMA to require the Secretary to involve the public in the evaluation of state CZM programs. At least 45 days notice must be given of any public meetings conducted during the evaluation. Completion of a final report on the evaluation would be required within 120 days of the last public meeting held in the State being evaluated.

Section 109(b) of the bill amends section 312(c) of the CZMA to provide for suspension and withdrawal of financial assistance to a State which is not adhering to its approved CZM program, a plan developed to manage a estuarine reserve under section 315 of the CZMA, or the terms of any grant or cooperative funding agreement. Section 312(c), as amended, also specifies the procedures the Secretary must follow before suspending financial assistance,

which procedures include notification of the Governor of the state. A suspension under this section would be for not less than six months nor more than 36 months.

Section 109(c) of the bill amends section 312(d) of the CZMA to require the Secretary to withdraw program approval for a State that does not make the necessary changes to its program, as required under the terms of a suspension notice given under section 312(c), as amended.

SECTION 110.—NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM

Section 110 amends section 315 of the CZMA to change the name of the National Estuarine Reserve Research System to the National Estuarine Research Reserve System. The section increases the financial assistance for land or water acquisition for any one estuarine research reserve from $4 million to $5 million, or 50 percent of the total costs, whichever amount is less. The section also increases the Federal share of the costs from 50 percent to 70 percent for managing a reserve and constructing facilities, and for conducting educational or interpretive activities. However, activities which benefit the entire Reserve System may be Federally funded up to 100 percent.

SECTION 111.—AUTHORIZATION OF APPROPRIATIONS

Section 111 of the bill amends section 318(a) of the CZMA to authorize appropriations for the Act in such amounts as are necessary, not to exceed the following amounts:

	Amount
Section 305:	
FY1991	$750,000
FY1992	750,000
FY1993	750,000
Sections 306, 306a and 309: [1]	
FY1991	42,000,000
FY1992	45,890,000
FY1993	50,870,000
FY1994	54,930,000
FY1995	60,090,000
Section 306B:	
FY1991	10,000,000
FY1992	15,000,000
FY1993	20,000,000
FY1994	25,000,000
FY1995	30,000,000
Section 315:	
FY1991	6,000,000
FY1992	6,270,000
FY1993	6,552,000
FY1994	6,847,000
FY1995	7,155,000
Section 310 and administrative expenses: [2]	
FY1991-FY1995	[3] 10,000,000

[1] Section 309 is capped at $10,000,000 annually, under the amendment made by section 107 of the bill.

[2] Administrative expenses are capped at $5,000,000 per fiscal year.

[3] Annually.

SECTION 112.—CONFORMING AMENDMENTS

Section 112 provides for technical conforming amendments.

SECTION 113.—OFFICE OF COASTAL ZONE MANAGEMENT

Section 113 of the bill establishes within NOAA an Assistant Administrator for Ocean and Coastal Zone Management, who would execute the current responsibilities of NOAA's Office of Ocean and Coastal Resource Management as well as other activities dealing directly with coastal zone management vested by law in NOAA, its Administrator, or the Secretary. The Assistant Administrator also would be responsible for other resource management functions as assigned by the Secretary or the Administrator, or by legislation.

TITLE II—INTERNATIONAL COOPERATION IN COASTAL ZONE MANAGEMENT

SECTION 201.—FINDINGS AND PURPOSE

Section 201 of the bill contains congressional findings regarding the value of the United States' experience in coastal management and the need to share this experience with the international community.

SECTION 202.—SENSE OF CONGRESS

Section 202 of the bill expresses the sense of the Congress that the Secretary and the Secretary of State should cooperate to develop a program of technical assistance for developing nations with regard to coastal zone management. This program should address issues related to potential climate change, including sea level rise, the increasing frequency and severity of storms, and the need for buffers to allow natural systems to adapt to changes in climate and sea level.

Section 202(b) of the bill expresses the sense of the Congress that coastal zone management should be an integral part of ongoing negotiations by the U.N. Intergovernmental Panel on Climate Change. It encourages the Secretary and the Secretary of State to initiate discussions with other nations to include coastal management as part of an international convention on global climate change.

Section 202(c) of the bill requires the Secretary and the Secretary of State to report to the Congress on implementation of this title 6 months after enactment, and periodically thereafter.

ADDITIONAL VIEWS OF MR. LOTT

As I voiced in the Commerce Committee's markup hearing, Mississippi is extensively affected by the outcome of this legislation. My State has three entire counties included in its coastal zone, totaling 1,751 square miles. The current language would significantly expand our coastal zone both landward and seaward.

The wetland definition included in the bill substantially affects Mississippi's ability to maintain a critical balance between environmental and economic interests. Use of the phrase "hydrollogically related areas" in the definition of "coastal wetlands" allows, under reasonable interpretation, significant spacial extension of the regulatory power of the act beyond the current zone. It is conceivable that this definition, along with the bill's consistency provisions, could expand the regulatory influence of the State well into the Ohio and Mississippi River Valleys.

Mississippi has become a world leader in the catfish farming industry. It is an important economic interest to the State, contributing thousands of jobs and a significant tax base. Under the bill's water quality and wetlands provisions, these manmade farms could be adversely impacted. Other elements of the water quality provisions severely skew regulatory control toward elimination of functions believed to be contributors of nonpoint source pollution, but which have no proven causative relationship. Mississippi would be negatively impacted by this provision.

The current authorization language of NOAA requires the agency to conduct a study to determine if global warming exists. This bill short-circuits this analysis by establishing in law the determination that global warming not only exists—but will cause a one meter rise in sea level by the year 2050. This proclamation does not reflect the consensus of scientific study, nor does it establish sound policy. NOAA should conduct its study and report to Congress its findings before any proclamation is made into law.

Additionally, I am disturbed at the extraordinary authorization increase contained in the bill. This country is experiencing continued budget deficits, fueled by overspending and stress in our financial industry, raising the possibility of tax increases. It is not in the best interest of this country to dramatically increase government's size and cost when we cannot afford our current level of operations. For this same reason, I oppose both the International Assistance provision and the organizational changes requiring creation of the Office of Coastal Zone Management, regardless of what rationale is employed.

I was an original sponsor of the 1972 Coastal Zone Management Act and I fully support the need for management of our coastal regions. The goal is both noble and justified; however, balanced consideration of competing needs within the coastal zone is essential. This bill, as written, does not achieve this careful balance.

Following is a list of my specific concerns with the bill as drafted.

TRENT LOTT.

COASTAL ZONE IMPROVEMENT ACT—LOTT AMENDMENTS TO DRAFT

TITLE I

FINDINGS AND POLICY

Sec. 302(2).—Strike entire section.

[Section increases the potential size of the coastal zone seaward to the exclusive economic zone boundary.]

Sec. 303(2)(A).—Strike "priority consideration" and replace with "balanced consideration."

[Current draft eliminates all balance between ecological concerns and development concerns. "Balanced consideration" helps maintain a management approach to the CZ vice preservation of the CZ.]

Sec. 303(2)(B).—Strike "sea level rise due to global warming" and insert "area vulnerable to sea level rise."

[No scientific consensus on global warming. Interrupts NOAA's direction to *study* the issue to determine if it exists.]

Sec. 303(2)(C).—Substitute "the management of coastal development to sustain, preserve and restore the quality of coastal waters, and to inhibit the impairment of natural resources and existing uses of those waters."

Sec. 303(2)(K).—After "subsidence" strike all and insert "fluctuating water levels and its impact on coastal states."

[Strikes global warming language and adds "water level fluctuation."]

Sec. 303(6).—Add period after "management" and strike remaining text.

[Eliminates emphasis on seaward planning which spatially increases to seaward the coastal zone.]

DEFINITIONS

Sec. 304(a)(1).—Delete paragraph.

[No need to strike "only." State already has limited authority to extend the zone landward. Current language and text are acceptable. Change would result in litigation. Existing guidelines are clear.]

Sec. 304(a)(2).—Strike paragraph.

[Global warming language; problems as noted.]

Sec. 304(a)(5A).—Strike "or group of hydrologically related areas that are—".

["Hydrologically related areas" is too broad. Change makes definition more compatible with Corps of Engineers and EPA current definitions.]

Sec. 304(a)(A).—Strike entire paragraph.

["Coastal state" is not distinctive. Language is too vague; increases potential for litigation.]

Sec. 304(a)(5B).—Strike "significant likelihood" and insert "clear determination."

[Current language is too vague and inclusive. It creates special use areas with no spatial limitations.]

Sec. 304(18).—Strike entire paragraph.

[Retains the current definition of "water use."]

Sec. 306(8).—Insert "security" between "national" and "interest."

[National interests are not identified in the bill. How will states know what definitively is in the national interest? National security interests are more clearly identified; they also explicity include defense related functions.]

Sec. 306(9).—Strike entire paragraph.

[Language is too restrictive; not balancing.]

WATER QUALITY LAND USE SECTION

Sec. 306B(b)(1).—Strike "may."

[Inclusion of "may" significantly increases the regulatory power of the water quality section. Deleting requires that a causative relationship exist between the activity and the non-point source pollution.]

Sec. 306B(b)(1)(C)(iv).—After "importance" add "excluding man-made fish farms and their supporting activities."

[Mississippi has catfish farms and offset processing buildings which are in conflict with current language.]

Sec. 306B(3)(B)(iv).—Strike entire paragraph.

[Language identifies acceptable land management measures to include "techniques for identifying and protecting critical coastal areas and habitats."]

Sec. 306B(c)(2).—Strike "shall" and insert "may."

[Change provides Secretary of Commerce flexibility in grant awards.]

CONSISTENCY

Sec. 307(c)(1).—Insert language creating a method by which the affected federal agency or state can appeal the imposed consistency decisions directly to the Secretary of Commerce. Secretary should have a time limit of 180 days to rule on the appeal.

[Provides an appeal sequence to evalute competing interest.]

Sec. 307(c)(3).—Insert language limiting to 180 days states may review and rule on an application for a consistency determination on an OCS oil and gas exploration or development and production project.

[Language recognizes consistency requirements, but restricts states from protracted delays on pending decisions.]

COASTAL ZONE ENHANCEMENT GRANTS

Sec. 390(a)(1).—Strike entire paragraph.

[No net loss provisions radically destroy the balance between competing interest.]

NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM

Sec. 315 (b) (1) and (2) and (d).—Strike authorization levels; leave at current levels.

[Increased authorized levels are not required/justified. Current budget environment requires greater fiscal responsibility.]

AUTHORIZATION OF APPROPRIATIONS

Sec. 318.—Strike all funding increases.
[Use FY 1990 funding authorization levels.]

OFFICE OF COASTAL ZONE MANAGEMENT

Sec. 113.—Strike all.
[Current organization is acceptable.]

TITLE II

Strike all.
[International technical assistance cannot be justified in present budget environment.]

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

COASTAL ZONE MANAGEMENT ACT OF 1972

Section 302 of that Act

CONGRESSIONAL FINDINGS

SEC. 302. The Congress finds that—

(a) through (c) * * *

(d) The *habitat areas of the* coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations.

(e) * * *

(f) New and expanding demands for food, energy, minerals, defense needs, recreation, waste disposal, transportation, and industrial activites in the Great Lakes, territorial sea, *exclusive economic zone,* and Outer Continental Shelf are placing stress on these areas and are creating the need for resolution of serious conflicts among important and competing uses and values in coastal and ocean waters;

(g) through (j) * * *

(k) Land uses in the coastal zone, and the uses of adjacent lands which drain into the coastal zone, may significantly affect the quality of coastal waters and habitats, and efforts to control coastal water pollution from land use activities must be improved.

(l) Because global warming may result in a substantial sea level rise with serious adverse effects in the coastal zone, coastal states must anticipate and plan for such an occurrence.

(m) Because of their proxmity to and reliance upon the ocean and its resources, the coastal states have substantial and significant interests in the protection, management, and development of the resources of the exclusive economic zone that can be only served by the active participation of coastal states in all Federal programs affecting such resources and by the development of state ocean resource management plans as part of their federally approved coastal zone management programs.

Section 303 of that Act

CONGRESSIONAL DECLARATION OF POLICY

SEC. 303. The Congress finds and declares that it is the national policy—

(1) * * *

(2) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving [full consideration] *priority consideration* to ecological, cultural, historic, and esthetic values [as well as to needs for] *while allowing compatible* economic development, which programs should at least provide for—

(A) the protection of natural resources, including wetlands, flood-plains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and wildlife and their habitat, within the coastal zone,

(B) the management of coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard, and erosion-prone areas and in areas [of subsidence] *likely to be affected by or vulnerable to sea level rise from global warming, land subsidence,* and saltwater intrusion, and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands.

(C) the management of coastal development to improve, protect, and restore the quality of coastal waters, and to prevent the impairment of natural resources and existing uses of those waters,

[(C)] *(D)* priority consideration being given to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation, and the location, to the maximum extent practicable, or new commercial and industrial developments in or adjacent to areas where such development already exists,

[(D)] *(E)* public access to the coasts for recreation purposes,

[(E)] *(F)* assistance in the redevelopment of deteriorating urban waterfronts and ports, and sensitive preservation and restoration of historic, cultural, and esthetic coastal features,

[(F)] *(G)* the coordination and simplification of procedures in order to ensure expedited governmental decision-making for the management of coastal resources,

[(G)] *(H)* continued consultation and coordination with, and the giving of adequate consideration of the views of, affected Federal agencies,

[(H)] *(I)* the giving of timely and effective notification of, and opportunities for public and local government participation in, coastal management decisionmaking [and]

[(I)] *(J)* assistance to support comprehensive planning, conservation, and management for living marine resources, including planning for the siting of pollution control and aquaculture facilities within the coastal zone, and improved coordination between State and Federal coastal zone management agencies and State and wildlife agencies[;], *and*

(K) the study, development, and implementation of management plans for addressing the adverse effects upon the coastal zone of land subsidence and of sea level rise from global warming anticipated over the next fifty years in those coastal states likely to be affected by land subsidence and sea level rise;

(3) to encourage the preparation of special area management plans which provide for increased specificity in protecting significant natural resources, reasonable coastal-dependent economic growth, improved protection of life and property in hazardous areas, *including those areas likely to be affected by land subsidence, sea level rise, or fluctuating water levels of the Great Lakes,* and improved predictability in governmental decisionmaking; [and]

(4) to encourage the participation and cooperation of the public, state and local governments, and interstate and other regional agencies, as well as of the Federal agencies having programs affecting the coastal zone, in carrying out the purposes of this title[.];

(5) to encourage coordination and cooperation with and among the appropriate Federal, state, and local agencies, and international organizations where appropriate, in collection, analysis, synthesis, and dissemination of coastal management information, research results, and technical assistance, to support state and Federal regulation of land use practices affecting the coastal and ocean resources of the United States; and

(6) to respond to changing circumstances affecting the coastal environment and coastal resource management by encouraging states to focus management planning activities on emerging issues such as planning for ocean uses seaward of the coastal zone but potentially affecting the coastal zone.

Section 304 of that Act

DEFINITIONS

SEC. 304. For purposes of this title—

(1) The term "coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines [only] to the extent necessary to control shorelands, the uses of which

have a direct and significant impact on the coastal waters, *and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise from global warming.* Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

(2) through (5) * * *

(5A) The term "coastal wetland" means an area or group of hydrologically related areas that are—

(A) within the coastal zone of any coastal state; and

(B) inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

The term includes swamps, marshes, bogs, mud flats, and vegetated shallows.

(5B) The term "critical coastal area" means an area identified, on the basis of geological, hydrological, and ecological factors and proximity to sensitive coastal waters, wetlands, and habitats, to be an area for which there is a significant likelihood that any new or expanded land use will have an adverse effect on coastal waters, either directly or through cumulative or secondary effects, unless appropriate land use management measures are employed.

(6) through (9) * * *

(10) The term "land use" means [activities which are conducted in, or on the shorelands within, the coastal zone, subject to the requirements outlined in section 307(g).] *a use, activity, or project conducted on shorelines within the coastal zone.*

(11) through (17) * * *

(18) The term "water use" means [activities which are conducted in or on the water; but does not mean or include the establishment of any water quality standard or criteria or the regulation of the discharge or runoff of water pollutants except the standards, criteria, or regulations which are incorporated in any program as required by the provisions of section 307(f).] *or a use, activity, or project conducted in or on waters within the coastal zone.*

Section 305 of that Act

[MANAGEMENT PROGRAM DEVELOPMENT GRANTS

[SEC. 305. (a) The Secretary may make grants to any coastal state—

[(1) under subsection (c) for the purpose of assisting such state in the development of a management program for the land and water resources of its coastal zone; and

[(2) under subsection (d) for the purpose of assisting such state in the completion of the development, and the initial implementation, of its management program before such state qualifies for administrative grants under section 306.

[(b) The management program for each coastal state shall include each of the following requirements:

[(1) An identification of the boundaries of the coastal zone subject to the management program.

[(2) A definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.

[(3) An inventory and designation of areas of particular concern within the coastal zone.

[(4) An identification of the means by which the state proposes to exert control over the land uses and water uses referred to in paragraph (2), including a listing of relevant constitutional provisions, laws, regulations and judicial decisions.

[(5) Broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

[(6) A description of the organizational structure proposed to implement such management program, including the responsibilities and interrelationships of local, areawide, state, regional, and interstate agencies in the management process.

[(7) A definition of the term "beach" and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value.

[(8) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including, but not limited to, a process for anticipating and managing the impacts from such facilities.

[(9) A planning process for (A) assessing the effects of shoreline erosion (however caused), and (B) studying and evaluating ways to control, or lessen the impact of, such erosion, and to restore areas adversely affected by such erosion.

No management program is required to meet the requirements in paragraphs (7), (8), and (9) before October 1, 1978.

[(c) The Secretary may make a grant annually to any coastal state for the purposes described in subsection (a)(1) if such state reasonably demonstrates to the satisfaction of the Secretary that such grant will be used to develop a management program consistent with the requirements set forth in section 306. The amount of any such grant shall not exceed 80 per centum of such state's cost for such purposes in any one year. No coastal state is eligible to receive more than four grants pursuant to this subsection. After the initial grant is made to any coastal state pursuant to this subsection, no subsequent grant shall be made to such state pursuant to this subsection unless the Secretary finds that such state is satisfactorily developing its management program.

[(d)(1) The Secretary may make a grant annually to any coastal state for the purposes described in subsection (a)(2) if the Secretary finds that such state meets the eligibility requirements set forth in paragraph (2). The amount of any such grant shall not exceed 80 per centum of the costs for such purposes in any one year.

[(2) A coastal state is eligible to receive grants under this subsection if it has—

[(A) developed a management program which—

[(i) is in compliance with the rules and regulations promulgated to carry out subsection (b), but

[(ii) has not yet been approved by the Secretary under section 306;

[(B) specifically identified, after consultation with the Secretary, any deficiency in such program which makes it ineligible for approval by the Secretary pursuant to section 306, and has established a reasonable time schedule during which it can remedy any such deficiency;

[(C) specified the purposes for which any such grant will be used;

[(D) taken or is taking adequate steps to meet any requirement under section 306 or 307 which involves any Federal official or agency; and

[(E) complied with any other requirement which the Secretary, by rules and regulations, prescribes as being necessary and appropriate to carry out the purposes of this subsection.

[(3) No management program for which grants are made under this subsection shall be considered an approved program for purposes of section 307.

[(e) Grants under this section shall be made to, and allocated among, the coastal states pursuant to rules and regulations promulgated by the Secretary; except that—

[(1) no grant shall be made under this section in an amount which is more than 10 per centum of the total amount appropriated to carry out the purposes of this section, but the Secretary may waive this limitation in the case of any coastal state which is eligible for grants under subsection (d); and

[(2) no grant shall be made under this section in an amount which is less than 1 per centum of the total amount appropriated to carry out the purposes of this section, but the Secretary shall waive this limitation in the case of any coastal state which requests such a waiver.

[(f) The amount of any grant (or portion thereof) made under this section which is not obligated by the coastal state concerned during the fiscal year for which it was first authorized to be obligated by such state, or during the fiscal year immediately following, shall revert to the Secretary who shall add such amount to the funds available for grants under this section.

[(g) With the approval of the Secretary, any coastal state may allocate to any local government, to any areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, to any regional agency, or to any interstate agency, a portion of any grant received by it under this section for the purpose of carrying out the provisions of this section.

[(h) Any coastal state which has completed the development of its management program shall submit such program to the Secretary for review and approval pursuant to section 306. Whenever the Secretary approves the management program of any coastal state under section 306, such state thereafter—

[(1) shall not be eligible for grants under this section; except that such state may receive grants under subsection (c) in order to comply with the requirements of paragraphs (7), (8), and (9) of subsection (b); and

[(2) shall be eligible for grants under section 306.

[(i) The authority to make grants under this section shall expire on September 30, 1979.]

MANAGEMENT PROGRAM DEVELOPMENT GRANTS

SEC. 305. (a) In fiscal years 1991, 1992, and 1993, the Secretary may make a grant annually to any coastal state without an approved program if the coastal state demonstrates to the satisfaction of the Secretary that the grant will be used to develop a management program consistent with the requirements set forth in section 306. The amount of any such grant shall not exceed $200,000 in any fiscal year, and shall require state matching funds according to a four-to-one ratio of Federal-to-state contributions. After an initial grant is made to a coastal state pursuant to this subsection, no subsequent grant shall be made to that coastal state pursuant to this subsection unless the Secretary finds that the coastal state is satisfactorily developing its management program. No coastal state is eligible to receive more than two grants pursuant to this subsection.

(b) Any coastal state which has completed the development of its management program shall submit such program to the Secretary for review and approval pursuant to section 306.

Section 306 of that Act

[ADMINISTRATIVE GRANTS

[SEC. 306. (a) The Secretary may make grants to any coastal state for the purpose of administering that state's management program, if the state matches any such grant according to the following ratios of Federal to state contributions for the applicable fiscal year: 4 to 1 for fiscal year 1986; 2.3 to 1 for fiscal year 1987; 1.5 to 1 for fiscal year 1988; 1 to 1 for any fiscal year after fiscal year 1988. The Secretary may make the grant only if the Secretary—

[(1) finds that such program meets the requirements of section 305(b)

[(2) approves such program in accordance with subsections (c), (d), and (e); and

[(3) finds, if such program has been administered with financial assistance under this section for at least one year, that the coastal state will expend as increasing proportion of each grant received under this section (but not more than 30 per centum of the grant unless the state chooses to expend a higher percentage) on activities that will result in significant improvement being made in achieving the coastal management objectives specified in section 303(2)(A) through (I).

For purposes of this subsection, the costs of administering a management program includes costs incurred in the carrying out, in a manner consistent with the procedures and processes specified therein, of projects and other activities (other than those of a kind referred to in clauses (A), (B), or (C) of section 306A(c)(2)) that are necessary or appropriate to the implementation of the management program.

[(b) Such grants shall be allocated to the states with approved programs based on rules and regulations promulgated by the Secre-

tary which shall take into account the extent and nature of the shoreline and area covered by the plan, population of the area, and other relevant factors: Provided, That no annual grant made under this section shall be less than 1 per centum of the total amount appropriated to carry out the purposes of this section: And provided further, That the Secretary shall waive the application of the 1 per centum minimum requirement as to any grant under this section, when the coastal State involved requests such a waiver.

[(c) Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that:

[(1) The state has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303 of this title.

[(2) The state has:

[(A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the state's management program is submitted to the Secretary, which plans have been developed by a local government, an areawide agency designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency; and

[(B) establish an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (5) of this subsection and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this title; except that the Secretary shall not find any mechanism to be "effective" for purposes of this subparagraph unless it includes each of the following requirements:

[(i) Such management agency if required, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other action, to send a notice of such management program decision to any local government whose zoning authority is affected thereby.

[(ii) Any such notice shall provide that such local government may, within the 30-day period commencing on the date of receipt of such notice, submit to the management agency written comments on such management program decision, and any recommendation for alternatives thereto, if no action is taken during such period which would conflict or interfere with such management program decision, unless such local government waives its right to comment.

[(iii) Such management agency, if any such comments are submitted to it, with such 30-day period, by any local government—

[(I) is required to consider any such comments,

[(II) is authorized in its discretion, to hold a public hearing on such comments, and

[(III) may not take any action within such 30-day period to implement the management program decision, whether or not modified on the basis of such comments.

[(3) The state has held public hearings in the development of the management program.

[(4) The management program and any changes thereto have been reviewed and approved by the Governor.

[(5) The Governor of the state has designated a single agency to receive and administer the grants for imlementing the management program required under paragraph (1) of this subsection.

[(6) The state is organized to implement the management program required under paragraph (1) of this subsection.

[(7) The state has the authorities necessary to implement the program, including the authority required under subsection (d) of this section.

[(8) The management program provides for adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, such state's coastal zone) which are necessary to meet requirements which are other than local in nature. In the case of such energy facilities, the Secretary shall find that the state has given such consideration to any applicable interstate energy plan or program.

[(9) The management program makes provision for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, or esthetic values.

[(d) Prior to granting approval of the management program, the Secretary shall find that the state, acting through its chosen agency or agencies, including local governments, areawide agencies designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 regional agencies, or interstate agencies, has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power—

[(1) to administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses; and

[(2) to acquire fee simple and less than fee simple interests in lands, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

[(e) Prior to granting approval, the Secretary shall also find that the program provides:

[(1) for any one or a combination of the following general techniques for control of land and water uses within the coastal zone;

[(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance;

[(B) Direct state land and water use planning and regulation; or

[(C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

[(2) for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit.

[(f) With the approval of the Secretary, a state may allocate to a local government, an areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency, a portion of the grant under this section for the purpose of carrying out the provisions of this section: Provided, That such allocation shall not relieve the state of the responsibility for ensuring that any funds so allocated are applied in furtherance of such state's approved management program.

[(g) Any coastal state may amend or modify the management program which it has submitted and which has been approved by the Secretary under this section, pursuant to the required procedures described in subsection (c), and subject to the following conditions:

[(1) The state shall promptly notify the Secretary of any proposed amendment, modification or other program change and submit it for Secretarial approval. The Secretary may suspend all or part of any grant made under this section pending state submission of the proposed amendment, modification or other program change.

[(2) Within 30 days from the date on which the Secretary receives any proposed amendment, the Secretary shall notify the state whether the Secretary approves or disapproves the amendment, or whether the Secretary finds it is necessary to extend the review of the proposed amendment for a period not to exceed 120 days from the date the Secretary received the proposed amendment. The Secretary may extend this 120-day period only as necessary to meet the requirements of the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

[(3) The state may not implement any proposed amendment as part of its approved program pursuant to section 306, until after the proposed amendment has been approved by the Secretary.

[(h) At the discretion of the state and with the approval of the Secretary, a management program may be developed and adopted in segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need manage-

ment programs: Provided, That the state adequately provides for the ultimate coordination of the various segments of the management program into a single unified program and that the unified program will be completed as soon as is reasonably practicable.

[(i) The coastal states are encouraged to provide in their management programs for—

[(A) the inventory and designation of areas that contain one or more coastal resources of national significance; and

[(B) specific and enforceable standards to protect such resources.

If the Secretary determines that a coastal state has failed to make satisfactory progress in the activities described in this subsection by September 30, 1984, the Secretary shall not make any grants to such state provided under section 306A after such date.]

ADMINISTRATIVE GRANTS

SEC. 306. (a) The Secretary may make grants to any coastal state for the purpose of administering that state's management program, if the state matches any such grant according to the following ratios of Federal-to-state contributions for the applicable fiscal year:

(1) For those states for which programs were approved prior to enactment of the Coastal Zone Improvement Act of 1990, one to one for any fiscal year.

(2) For programs approved after enactment of the Coastal Zone Improvement Act of 1990, four to one for the first fiscal year, 2.3 to one for the second fiscal year, 1.5 to one for the third fiscal year, and one to one for each fiscal year thereafter.

(b) The Secretary may make a grant to a coastal state under subsection (a) only if the Secretary finds that the management program of the coastal state meets all applicable requirements of this title and has been approved in accordance with subsection (d).

(c) Grants under this section shall be allocated to coastal states with approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the program, population of the area, and other relevant factors. The Secretary shall establish, after consulting with the coastal states, maximum and minimum grants for any fiscal year to promote equity between coastal states and effective coastal management.

(d) Before approving a management program submitted by a coastal state, the Secretary shall find the following:

(1) The state has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties and individuals, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303.

(2) The management program includes each of the following required program elements:

(A) An identification of the boundaries of the coastal zone subject to the management program.

(B) A definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.

(C) An inventory and designation of areas of particular concern within the coastal zone.

(D) An identification of the means by which the state proposes to exert control over the land uses and water uses referred to in subparagraph (B), including a listing of relevant state constitutional provisions, laws, regulations, and judicial decisions.

(E) Broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

(F) A description of the organizational structure proposed to implement such management program, including the responsibilities and interrelationships of local, areawide, state, regional, and interstate agencies in the management process.

(G) A definition of the term "beach" and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value.

(H) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including a process for anticipating the management of the impacts resulting from such facilities.

(I) A planning process for assessing the effects of, and studying and evaluating ways to control, or lessen the impact of, shoreline erosion, and to restore areas adversely affected by such erosion.

(3) The state has—

(A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone—

(i) existing on January 1 of the year in which the state's management program is submitted to the Secretary; and

(ii) which have been developed by a local government, an areawide agency, a regional agency, or an interstate agency; and

(B) established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (6) and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of those local governments and agencies in carrying out the purposes of this title; except that the Secretary shall not find any mechanism to be effective for purposes of this subparagraph unless it requires that—

(i) the management agency, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other action, shall send a notice of the management program decision to any local government whose zoning authority is affected;

(ii) within the thirty-day period commencing on the date of receipt of the notice, the local government may submit to the management agency written comments on the management program decision, and any recommendation for alternatives; and

(iii) the management agency, if any comments are submitted to it within the thirty-day period by any local government—

(I) shall consider the comments;

(II) may, in its discretion, hold a public hearing on the comments; and

(III) may not take any action within the thirty-day period to implement the management program decision.

(4) The state has held public hearings in the development of the management program.

(5) The management program and any changes thereto have been reviewed and approved by the Governor of the state.

(6) The Governor of the state has designated a single state agency to receive and administer grants for implementing the management program.

(7) The state is organized to implement the management program.

(8) The management program provides for adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance. In the case of energy facilities, the Secretary shall find that the state has given consideration to any applicable national or interstate energy plan or program.

(9) The management program includes procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, historical, or esthetic values.

(10) The state, acting through its chosen agency or agencies (including local governments, areawide agencies, regional agencies, or interstate agencies) has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power—

(A) to administer land use and water use regulations to control development to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(B) to acquire fee simple and less than fee simple interests in land, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(11) The management program provides for any one or a combination of the following general techniques for control of land uses and water uses within the coastal zone:

(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement.

(B) Direct state land and water use planning and regulation.

(C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

(12) The management program contains a method of assuring that local land use and water use regulations within the coastal zone do not unreasonably restrict or exclude land uses and water uses of regional benefit.

(13) The management program provides for—

(A) the inventory and designation of areas that contain one or more coastal resources of national significance; and

(B) specific and enforceable standards to protect such resources.

(14) The management program provides for public participation in permitting processes, consistency determinations, and other similar decisions.

(e) A coastal state may amend or modify a management program which it has submitted and which has been approved by the Secretary under this section, subject to the following conditions:

(1) The state shall promptly notify the Secretary of any proposed amendment, modification, or other program change and submit it for the Secretary's approval. The Secretary may suspend all or part of any grant made under this section pending state submission of the proposed amendments, modification, or other program change.

(2) Within thirty days after the date the Secretary receives any proposed amendment, the Secretary shall notify the state whether the Secretary approves or disapproves the amendment or whether the Secretary finds it is necessary to extend the review of the proposed amendment for a period not to exceed one hundred and twenty days after the date the Secretary received the proposed amendment. The Secretary may extend this period only as necessary to meet the requirements of the National Environmental Policy Act (42 U.S.C. 4321 et seq.). If the Secretary does not notify the coastal state that the Secretary approves or disapproves the amendment within that period, then the amendment shall be conclusively presumed as approved.

(3)(A) Except as provided in subparagraph (B), a coastal state may not implement any amendment, modification, or other change as part of its approved management program unless the amendment, modification, or other change is approved by the Secretary under this subsection.

(B) The Secretary, after determining on a preliminary basis that an amendment, modification, or other change which has been submitted for approval under this subsection is likely to meet the program approval standards in this section, may permit the state to expend funds awarded under this section to begin implementing the proposed amendment, modification, or change. This preliminary approval shall not extend for more than six months and may not be renewed.

Section 306A of that Act

RESOURCE MANAGEMENT IMPROVEMENT GRANTS

SEC. 306A. (a) * * *

(b) The Secretary may make grants to any eligible coastal state to assist that state in meeting one or more of the following objectives:

(1) The preservation or restoration of specific areas of the state that (A) are designated under the management program procedures required by section [306(c)(9)] *306(d)(9)* because of their conservation recreational, ecological, or esthetic values, or (B) contain one or more coastal resources of national significance.

(2) through (3) * * *

(c) through (f) * * *

MANAGING LAND USES THAT AFFECT COASTAL WATERS

SEC. 306B. (a)(1) Not later than three years after the effective date of this section, the management agency designated pursuant to section 306(d)(6) by each coastal state for which a management program has been approved pursuant to section 306 shall prepare and submit to the Secretary a coastal water quality protection program (hereafter in this section referred to as the "protection program") for approval pursuant to this section. The purpose of the protective program shall be to develop and implement coastal land use management measures for land-based sources of nonpoint source pollution, working in close conjunction with other state and local authorities.

(2) The protection program shall be developed, submitted, and implemented in conjunction with state and local water quality authorities. The protection program shall be integrated with the state's coastal water quality program under title III of the Federal Water Pollution Control Act as it relates to coastal waters, and shall be compatible and coordinated with the programs developed pursuant to sections 208, 303, 304, 319, 320, and 420(p) of that Act (33 U.S.C. 1288, 1313, 1314, 1329, 1330, and 1342(p)).

(b) The Secretary shall approve a protection program under this section if it provides for the following:

(1) The identification of, and a continuing process for identifying, land uses which, individually or cumulatively, may cause or contribute significantly to a degradation of—

(A) those coastal waters where there is a failure to attain or maintain applicable water quality standards or protect designated uses, as determined by the state pursuant to its water quality planning processes;

(B) those coastal waters that are threatened by reasonably foreseeable increases in pollution loadings from new or expanding sources; or

(C) water bodies of significant resource value, which shall include such water bodies as—

(i) areas adjacent to national or state parks or wildlife refuges;

(ii) national estuarine research reserves and national marine sanctuaries;

(iii) waters adjacent to units of the coastal barrier resources system;

(iv) shellfish harvesting areas or fish spawning areas of particular state or local importance; or

(v) those waters already classified by the state as outstanding resource waters.

(2) The identification of, and a continuing process for identifying, critical coastal areas within which any new land uses or substantial expansion of existing land uses will be subject to the land use management measures that are determined necessary by the coastal management agency, in cooperation with the state water quality authorities and other state or local authorities, as appropriate, to protect and restore coastal water quality and designated uses.

(3)(A) The implementation and continuing revision from time to time of land use management measures applicable to the land uses and areas identified pursuant to paragraphs (1) and (2) that the coastal management agency, working in conjunction with the State water quality authorities and other state and local authorities determines are necessary to achieve applicable water quality standards and protect designated uses.

(B) Coastal land use management measures under this paragraph may include, among other measures, the use of—

(i) buffer strips;

(ii) setbacks;

(iii) density restrictions;

(iv) techniques for identifying and protecting critical coastal areas and habitats;

(v) soil erosion and sedimentation control and other best management practices; and

(vi) siting and design criteria for water uses, including marinas.

(4) The provision of technical and financial assistance to local governments and the public for implementing the measures referred to in paragraph (3), including assistance in developing ordinances and regulations, technical guidance, and modeling to predict and assess the effectiveness of such measures, training, financial incentives, demonstration projects, and other innovations to protect coastal water quality and designated uses.

(5) Opportunities for public participation in all aspects of the protection program, including the use of public notices and opportunities for comment, nomination procedures, public hearings, technical and financial assistance, public education, and other means and measures.

(6) The establishment of mechanisms to improve coordination among state agencies and between state and local officials responsible for land use programs and permitting, water quality permitting and enforcement, habitat protection, and public health and safety, through the use of joint project review, interagency certifications, memoranda of agreements, and other mechanisms.

(7) Modification of the boundaries of the state coastal zone as the coastal management agency determines is necessary to manage the land uses identified pursuant to paragraph (1).

(c)(1) A proposed protection program shall constitute an amendment of the state's management program, and the submission and approval of the proposed protection program shall be governed by the procedures established by section 306(e).

(2) If the Secretary finds that a coastal state has failed to submit an approvable protection program as required by this section, the Secretary shall withhold a portion of grants otherwise available to such state under section 306 of this Act as follows:

(i) 10 percent after three years following the date of enactment of this section;

(ii) 15 percent after four years following such date of the enactment;

(iii) 20 percent after five years following such date of the enactment;

(iv) 30 percent after six years following such date of the enactment and thereafter.

The Secretary shall make amounts withheld under this paragraph available to states having protection programs approved under this section.

(d) The Secretary shall provide technical assistance to coastal states and local governments in developing and implementing protection programs under this section. Such assistance shall include—

(1) methods for assessing water quality impacts associated with coastal land uses;

(2) methods for assessing the cumulative water quality effects of coastal development;

(3) maintaining and from time to time revising an inventory of model ordinances, and providing other assistance of coastal state and local governments in identifying, developing, and implementing pollution control measures;

(4) methods to predict and assess the effects of coastal land use management measures on coastal water quality and designated uses; and

(5) information acquired through the National Status and Trends Program and other coastal monitoring activities.

(e) The Secretary shall provide grants to each coastal state to assist in fulfilling the requirements of this section if the coastal state matches any such grant according to a four-to-one ratio of Federal-to-state contribution. Funds available for implementing this section shall be allocated according to the regulations issued under section 306(c), except that the Secretary may retain up to 33 percent of any such funds to assist those states which the Secretary finds are making exemplary progress in complying with the requirements of this section or have extreme needs with respect to coastal water quality.

Section 307 of that Act

COORDINATION AND COOPERATION

SEC. 307. (a) * * *

(b) * * *

[(c)(1) Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management program.]

(c)(1) Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone or that leads to such effects shall be carried out in a manner which is consistent to the maximum extent practicable with approved state management programs. A Federal agency activity shall be subject to this paragraph unless it is subject to paragraph (2) or (3).

(2) through (3) * * *

(d) through (h) * * *

Section 309 of that Act

[INTERSTATE GRANTS

[SEC. 309. (a) The coastal States are encouraged to give high priority—

[(1) to coordinating State coastal zone planning, policies, and programs with respect to contiguous areas of such States;

[(2) to studying, planning, and implementing unified coastal zone policies with respect to such areas; and

[(3) to establishing an effective mechanism, and adopting a Federal-State consultation procedure, for the identification, examination, and cooperative resolution of mutual problems with respect to the marine and coastal areas which affect, directly or indirectly, the applicable coastal zone.

The coastal zone activities described in paragraphs (1), (2), and (3) of this subsection may be conducted pursuant to interstate agreements or compacts. The Secretary may make grants annually, in amounts not to exceed 90 percent of the cost of such activities, if the Secretary finds that the proceeds of such grants will be used for purposes consistent with sections 305 and 306.

[(b) The consent of the Congress is hereby given to two or more coastal States to negotiate, and to enter into, agreements or compacts, which do not conflict with any law or treaty of the United States, for —

[(1) developing and administering coordinated coastal zone planning, policies, and programs pursuant to sections 305 and 306; and

[(2) establishing executive instrumentalities or agencies which such States deem desirable for the effective implementation of such agreements or compacts.

Such agreements or compacts shall be binding and obligatory upon any State or party thereto without further approval by the Congress.

[(c) Each executive instrumentality or agency which is established by an interstate agreement or compact pursuant to this section is encouraged to give high priority to the coastal zone activities described in subsection (a). The Secretary, the Secretary of the Interior, the Chairman of the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Secretary of the department in which the Coast Guard is operating,

and the Secretary of Energy, or their designated representatives, shall participate ex officio on behalf of the Federal Government whenever any such Federal-State consultation is requested by such an instrumentality or agency.

[(d) If no applicable interstate agreement or compact exists, the Secretary may coordinate coastal zone activities described in subsection (a) and may make grants to assist any group of two or more coastal States to create and maintain a temporary planning and coordinating entity to carry out such activities. The amount of such grants shall not exceed 90 percent of the cost of creating and maintaining such an entity. The Federal officials specified in subsection (c), or their designated representatives, shall participate on behalf of the Federal Government, upon the request of any such temporary planning and coordinating entity for a Federal-State consultation.

[(e) A coastal State is eligible to receive financial assistance under this section if such State meets the criteria established under section 308(g)(1).]

COASTAL ZONE ENHANCEMENT GRANTS

SEC. 309. (a) For purposes of this section, the term "coastal zone enhancement objective" means any of the following six objectives:

(1) Ensuring that there is no net loss of coastal wetlands.

(2) Preventing or significantly reducing threats to life and destruction of property by eliminating development and redevelopment in high-hazard areas, managing development in other hazard areas, and anticipating and managing the effects of potential sea level rise.

(3) Attaining increased opportunities for public access, taking into account current and future public access needs, to coastal areas of recreational, historical, aesthetic, ecological, or cultural value.

(4) Reducing marine debris entering the Nation's coastal and ocean environment by managing uses and activities that contribute to the entry of such debris.

(5) Enhancing fishery management activities by—

(A) increased coordination and cooperation with interstate fishery commissions and Regional Fishery Management Councils; and

(B) development and adoption of procedures to control the cumulative impacts of coastal development on fisheries production and habitat.

(6) Preparing and implementing special area management plans for important coastal areas.

(b) Subject to the limitations and goals established in this section, the Secretary may make grants to coastal states to provide funding for development, submission for Federal approval, and implementation of program changes that support attainment of one or more coastal zone enhancement objectives.

(c)(1)(A) During fiscal years ending before October 1, 1995, a coastal state may be awarded funding under this section for purposes of developing and submitting for Federal approval program changes to

incorporate coastal zone enhancement objectives into the state's management program.

(B) For fiscal years ending before October 1, 1993, up to 100 percent of amounts awarded to the state under this section may be used for development and submission of such program changes.

(C) For fiscal years ending after September 30, 1993, and before October 1, 1995, up to 50 percent of amounts awarded to the state under this section may be used for development and submission of such program changes.

(2) Any funds awarded to a state under this section that are not used for development and submission of program changes to incorporate coastal zone enhancement objectives into a state's approved management program shall be used exclusively for implementation of one or more coastal zone enhancement objectives.

(d) The Secretary shall evaluate and rank state proposals for funding under this section, and make funding awards based on those proposals, taking into account the criteria established by the Secretary under subsection (e). The Secretary shall ensure that funding decisions under this section take into consideration the fiscal and technical needs of proposing states and the overall merit of each proposal in terms of benefits to the public.

(e) Within twelve months following the date of enactment of this section, and consistent with the notice and participation requirements established in section 317, the Secretary shall promulgate regulations concerning coastal zone enhancement grants that establish—

(1) specific and detailed criteria that must be addressed by a coastal state (including the state's priority needs for improvement as identified by the Secretary after careful consultation with the state) as part of the state's development and implementation of coastal zone enhancement objectives;

(2) administrative or procedural rules or requirements as necessary to facilitate the development and implementation of such objectives by coastal states; and

(3) other funding award criteria as are necessary or appropriate to ensure that evaluations of proposals, and decisions to award funding, under this section are based on objective standards applied fairly and equitably to those proposals.

(f) A state shall not be required to contribute any portion of the cost of any proposal for which funding is awarded under this section.

(g) Beginning in fiscal year 1991, up to 20 percent of the amounts appropriated to implement sections 306 and 306A of this title shall be retained by the Secretary for use in implementing this section, up to a maximum of $10,000,000 annually.

(h) If the Secretary finds that the state is not undertaking the actions committed to under the terms of the grant, the Secretary shall suspend the state's eligibility for further funding under this section for at least one year.

TECHNICAL ASSISTANCE

SEC. 310. (a) The Secretary shall conduct a program of technical assistance and management-oriented research necessary to support

the development and implementation of state coastal management program amendments under sections 306B and 309, and appropriate to the furtherance of international cooperative efforts and technical assistance in coastal zone management. Each department, agency, and instrumentality of the executive branch of the Federal Government may assist the Secretary, on a reimbursable basis or otherwise, in carrying out the purposes of this section, including the furnishing of information to the extent permitted by law, the transfer of personnel with their consent and without prejudice to their position and rating, and the performance of any research, study, and technical assistance which does not interfere with the performance of the primary duties of such department, agency, or instrumentality. The Secretary may enter into contracts or other arrangements with any qualified person for the purposes of carrying out this subsection.

(b)(1) The Secretary shall provide for the coordination of technical assistance, studies, and research activities under this section with any other such activities that are conducted by or subject to the authority of the Secretary.

(2) The Secretary shall make the results of research and studies conducted pursuant to this section available to coastal states in the form of technical assistance publications, workshops, or other means appropriate.

(3) The Secretary shall consult with coastal states on a regualr basis regarding the development and implementation of the program established by this section.

Section 312 of that Act

REVIEW OF PERFORMANCE

SEC. 312. (a) The Secretary shall conduct a continuing review of the performance of coastal states with respect to coastal management. Each review shall include a written evaluation with an assessment and detailed findings concerning the extent to which the state has implemented and enforced the program approved by the Secretary, addressed the coastal management needs identified in section 303(2)(A) [through (I)] *through (K), and adhered to the terms of any grant, loan, or cooperative agreement funded under this title.*

[(b) For the purpose of making the evaluation of a coastal state's performance, the Secretary shall conduct public meetings and provide opportunity for oral and written comments by the public. Each such evaluation shall be prepared in report form and the Secretary shall make copies thereof available to the public.]

(b) In evaluating a coastal state's performance, the Secretary shall conduct the evaluation in an open and public manner, and provide full opportunity for public participation, including holding public meetings in the state being evaluated and providing opportunities for the submission of written and oral comments by the public. The Secretary shall provide the public with at least forty-five days' notice of such public meetings by placing a notice in the Federal Register, by publication of timely notices in newspapers of general circulation within the state being evaluated, and by communications with persons and organizations known to be interested in the evaluation. Each evaluation shall be prepared in report form and

shall include written responses to the written comments received during the evaluation process. The final report of the evaluation shall be completed within one hundred and twenty days after the last public meeting held in the state being evaluated. Copies of the evaluation shall be immediately provided to all persons and organizations participating in the evaluation process.

[(c) The Secretary shall reduce any financial assistance extended to any coastal state under section 306 (but not below 70 per centum of the amount that would otherwise be available to the coastal state under such section for any year), and withdraw any unexpended portion of such reduction, if the Secretary determines that the coastal state—

[(1) is failing to make significant imrovement in achieving the coastal management objectives specified in section 303(2)(A) through (I); or

[(2) is failing to make satisfactory progress in providing in its management program for the matters referred to in section 306(i) (A) and (B).

(c)(1) The Secretary may suspend payment of any portion of financial assistance extended to any coastal state under this title, and may withdraw any unexpended portion of such assistance, if the Secretary determines that the coastal state is failing to adhere to (A) the management program or a state plan developed to manage a national estuarine reserve established under section 315 of this Act, or a portion of the program or plan approved by the Secretary, or (B) the terms of any grant or cooperative agreement funded under this title.

(2) Financial assistance may not be suspended under paragraph (1) unless the Secretary provides the Governor of the coastal state with—

(A) written specifications and a schedule for the actions that should be taken by the state in order that such suspension of financial assistance may be withdrawn; and

(B) written specifications directing how those funds from the suspended financial assistance shall be expended by the coastal state to take the actions referred to in subparagraph (A).

(3) The suspension of financial assistance may not last for less than six months or more than thirty-six months after the date of suspension.

[(d) The Secretary shall withdraw approval of the managment program of any coastal state, and shall withdraw any financial assistance available to that state under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal state is failing to adhere to, is not justified in deviating from (1) the management program approved by the Secretary, or (2) the terms of any grant or cooperative agreement funded under section 306, and refuses to remedy the deviation.]

(d) The Secretary shall withdraw approval of the management program of any coastal state and shall withdraw financial assistance available to that state under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal state has failed to take the actions referred to in subsection (c)(2)(A).

(e) * * *

[(f) The Secretary shall carry out research on, and offer technical assistance of the coastal states with respect to, those activities, projects, and other relevant matters evaluated under this section that the Secretary considers to offer promise toward improving coastal zone management.]

(g) * * *

Section 315 of that Act

NATIONAL ESTUARINE [RESERVE RESEARCH] *RESEARCH RESERVE* SYSTEM

SEC. 315. (a) * * *

(b) through (d) * * *

(e) FINANCIAL ASSISTANCE.—(1) * * *

(2) * * *

(3)(A) The amount of the financial assistance provided under paragraph (1)(A)(i) [of subsection (e)] with respect to the acquisition of lands and waters, or interests therein, for any one national estuarine reserve may not exceed an amount equal to 50 [per centum] *percent* of the costs of the lands, waters, and interests therein or [$4,000,000] *$5,000,000* whichever amount is less.

(B) The amount of the financial assistance provided under paragraph (1)(A) (ii) and (iii) and paragraph (1)(B) [of subsection (e)] may not exceed [50 per centum] *70 percent* of the costs incurred to achieve the purposes described in those paragraphs with respect to a reserve*; except that the amount of the financial assistance provided under paragraph (1)(A)(iii) may be up to 100 percent of any costs for activities that benefit the entire System.*

Section 318 of that Act

AUTHORIZATION OF APPROPRIATIONS

SEC. 318. (a) There are authorized to be appropriated to the Secretary—

[(1) such sums, not to exceed $35,000,000 for the fiscal year ending September 30, 1986, not to exceed $36,600,000 for the fiscal year ending September 30, 1987, $37,900,000 for the fiscal year ending September 30, 1988, $38,800,000 for the fiscal year ending September 30, 1989, and $40,600,000 for the fiscal year ending September 30, 1990, as may be necessary for grants under sections 306 and 306A, to remain available until expended;

[(2) such sums, not to exceed $75,000,000 for each of the fiscal years occurring during the period beginning October 1, 1980, and ending September 30, 1988, as may be necessary for grants under section 308(b)

[(3) such sums, not to exceed $1,000,000 for the fiscal year ending September 30, 1986, and not to exceed $1,500,000 for each of the fiscal years occurring during the period beginning October 1, 1986, and ending September 30, 1990, as may be necessary for grants under section 309, to remain available until expended;

[(4) such sums, not to exceed $2,500,000 for the fiscal year ending September 30, 1986, not to exceed $3,800,000 for the

fiscal year ending September 30, 1987, $4,500,000 for the fiscal year ending September 30, 1988, $5,000,000 for the fiscal year ending September 30, 1989, and $5,500,000 for the fiscal year ending September 30, 1990, as may be necessary for grants under section 315, to remain available until expended; and

[(5) such sums, not to exceed $3,300,000 for the fiscal year ending September 30, 1986, not to exceed $3,300,000 for the fiscal year ending September 30, 1987, $3,300,000 for the fiscal year ending September 30, 1988, $4,000,000 for the fiscal year ending September 30, 1989, and $4,000,000 for the fiscal year ending September 30, 1990, as may be necessary for administrative expenses incident to the administration of this title.]

(1) such sums, not to exceed $750,000 for each of the fiscal years occurring during the period beginning October 1, 1990, and ending September 30, 1993, as may be necessary for grants under section 305, to remain available until expended;

(2) such sums, not to exceed $42,000,000 for the fiscal year ending September 30, 1991, $45,890,000 for the fiscal year ending September 30, 1992, $50,870,000 for the fiscal year ending September 30, 1993, $54,930,000 for the fiscal year ending September 30, 1994, and $60,090,000 for the fiscal year ending September 30, 1995, as may be necessary for grants under sections 306, 306A, and 309, to remain available until expended;

(3) such sums, not to exceed $10,000,000 for the fiscal year ending September 30, 1991, $15,000,000 for the fiscal year ending September 30, 1992, $20,000,000 for the fiscal year ending September 30, 1993, $25,000,000 for the fiscal year ending September 30, 1994, $30,000,000 for the fiscal year ending September 30, 1995, as may be necessary for grants under section 306B, to remain available until expended;

(4) such sums, not to exceed $6,000,000 for the fiscal year ending September 30, 1991, $6,270,000 for the fiscal year ending September 30, 1992, $6,552,000 for the fiscal year ending September 30, 1993, $6,847,000 for the fiscal year ending September 30, 1994, and $7,155,000 for the fiscal year ending September 30, 1995, as may be necessary for grants under section 315, to remain available until expended; and

(5) such sums, not to exceed $10,000,000 for each of the fiscal years occurring during the period beginning October 1, 1990, and ending September 30, 1995, as may be necessary for activities under section 310 and for administrative expenses incident to the administration of this title; except that expenditures for such administrative expenses shall not exceed $5,000,000 in any such fiscal year.

(b) through (d) * * *

Title 5, United States Code

Section 5316 of that Title

§ 5316. Positions at level V

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2 as adjusted by section 5318 of this title:

* * * * * * *

Additional officers, Nuclear Regulatory Commission (5).

Assistant Administrator for *Ocean and* Coastal Zone Management, National Oceanic and Atmospheric Administration.

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